

1905-033
Lee Co.

Chancery Causes: Louisville & Nashville Railroad Co] vs. C. F. Eager & Co.

Huett, Baylor, Carnes, Taylor

CA - Contract Dispute

T. Property

Transportation

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining your orator, the Louisville & Nashville Railroad Company, a corporation organized and existing under the laws of the state of Kentucky, and doing business in the state of Virginia under and by virtue of the laws of said state, would respectfully show to your Honor that by an act of the General Assembly of Virginia approved on the 30th day of March, 1887, your orator was authorized to extend, locate, construct and operate an extension of its line of railroad from any of its roads or branches in the State of Kentucky into and within this state beginning on the state line between Kentucky and Virginia either at or near the head waters of Clover Fork of Cumberland River and thence through Pennington Gap or Big Stone Gap or both, or beginning on the state line between Kentucky and Virginia, at or near Cumberland Gap in Lee County, and extending, by any route it may adopt, to such point in the Counties of Lee, Scott, Wise Washington or Russell as ~~it~~ will enable it to connect with any line of railroad then or thereafter located or constructed in or to any of said Counties of Lee Scott, Wise, Washington or Russell, with power from time, to time of locating constructing and operating such branches and laterals as may enable it to connect the said extension with mining, manufacturing and other operations in any of the Counties in which said extension is authorized by said act to be located and constructed; and for the purposes of this act the same rights to acquire by purchase or condemnation lands for the right of way of its said extension and branches, and for stations and depots, which the laws of the state of Virginia grant to Companies of said state; and it was further authorized to acquire and hold real estate and personal property, and to have possess and exercise such powers and privileges, not inconsistent with the laws of the state of Virginia as might be required to locate, construct and operate such extensions and branches into and within this state; with the provision however, as to the location, construction, and operation of such extension and branches in the

state of Virginia, that it should be subject to all the obligations and duties, and be entitled to all the rights, powers and privileges imposed and granted by the provision of the laws or Code of Virginia applicable to railroads or internal improvement Companies of this state, except so far as the same may be inconsistent with the provisions of this act.

Your orator will now show your Honor that under and by the authority and privileges thus conferred upon it, it extended its line of railroad designated and called its Cumberland Valley Division, from its station at Corbin Kentucky, on its Knoxville Division, by way of Cumberland Gap on the Virginia and Kentucky state line to the town of Norton in the County of Wise and State of Virginia, where it connected its line of railroad with the Clinch Valley Division of the Norfolk & Western Railroad Company's line of railroad.

Your orator will now show your Honor that said line of railroad extending from the Virginia and Kentucky state line to the town of Norton in the County of Wise, was located and constructed over and upon a tract of land, among others, which at the time of location and construction was in the possession and occupancy of one John C. Vanoy, who claimed to be the owner thereof and who had purchased the same from one L.D. Fulkerson who had put him, the said Vanoy, in the possession thereof. That the said Fulkerson had purchased said tract of land at a judicial sale made in the latter part of the year of 1888, but at the time he sold to the said Vanoy he had not yet obtained the legal title to said tract of land.

Your orator will now show your Honor that it became necessary for it to obtain a right of way over and upon this strip of land for the purpose of constructing its aforesaid line of railroad, and that finding the said John C. Vanoy to be in possession of the said tract of land, the visible owner thereof, claiming it as his own, it on the 24th day of September, 1889, purchased from the said John C. Vanoy a strip of land 100 feet wide and 198 feet long and containing .455 of an acre for its right of way over and upon said tract of land, and on that day the said Vanoy and wife conveyed

to your orator said strip of land and delivered possession thereof to your orator; and your orator believing in good faith that it had obtained title to said land and without knowledge of any lien or other encumbrance thereon, which in any way affected the validity of the title thereto, went forward and constructed its line of railroad thereon, and has been using and occupying the same ever since.

Your orator will now show your Honor that at the rules held in the Clerk's Office of the Circuit Court of Lee County on the 16th day of October, 1899, one Eliza A. Taylor filed her bill against ^{*Adminr of L. D. Fulkerson deceased*} Hattie A. Fulkerson, your orator and others the object of which was to enforce the lien of a judgment alleged to have been obtained by the plaintiff in said bill against the said L. D. Fulkerson in his life-time and to subject for that purpose the strip of land which your orator had purchased as aforesaid from the said John C. Vanoy. This bill of Mrs. Taylor was filed in behalf of herself and all other lien creditors of the said L. D. Fulkerson. Such proceedings were had in said suit as resulted in a decree for the sale of said strip of land so purchased as aforesaid by your orator together with all the improvements erected thereon, and pursuant to said decree of sale on the 30th day of April, 1904, said strip of land with the improvements thereon, which consisted of the railroad track, embankments, ditches, ties and rails, were sold and C. R. Kesterson was the highest bidder therefor and bid the same off at the price of \$2250.00, but before said bid was accepted and said purchase confirmed, the said Kesterson transferred his bid to one C. F. Eager, who was the holder of the last judgment which was a lien upon the same and who undertook to protect all judgments which were prior liens to his own on said strip of land, and said bid of the said Kesterson as transferred to the said Eager was confirmed by the Court to said Eager and it was further ordered by said decree confirming said purchase to said Eager that a writ of possession be awarded to him whenever he should call for the same; all of which will more fully and at large appear by reference to the bill, and the proceedings thereunder in the Chancery cause of Eliza A. Taylor, vs. Hattie A.

Fulkerson, administratrix &c. et al, still remaining among the records of the Circuit Court of Lee County, and still a pending suit therein, which is made a part hereof and asked to be so considered by the Court, and if necessary that it be further heard with this bill.

Your orator will now show your Honor that it is a public service corporation, that it is a common carrier of property and persons between the town of Norton in the State of Virginia, where it connects with the Norfolk & Western Railroad, and the Wise Terminal Railroad and the town of Corbin, in the State of Kentucky, where it connects with its Knoxville Division going both north and south; that it also connects at Cumberland Gap, at or near the Virginia and Kentucky state line and at Middlesboro in the state of Kentucky with the Southern railroad; that it connects at Appalachia, Virginia with the Virginia and Southwestern railroad running southeast to Bristol and other points, and the Interstate railroad running to the Coal & Coking plants at Osaka and Stonega, Virginia; that over its said line of railroad, going both east and west, as well as north and south, there is a large amount of business done, passengers carried and freight and express matters transported; that it connects with the great coal and coke industries of Wise County, Virginia, the coal, coke and iron industries of Lee County, Virginia, the furnaces at Big Stone Gap, Virginia, and Middlesboro, Kentucky; that over its said line of railroad, in the state of Virginia it transports both east and west the United States mails, which it is under contract to carry and through which mails a large amount of the business, of this Country, as well as other sections of ^{our} common country, is transacted.

14 Your orator will now show your Honor that if its business is interrupted, if possession of the said strip of land is delivered to the said Eager and your orator is prohibited from using the same in running its trains over the road constructed upon said strip of land, great and irreparable injury will result to it, and like or even greater and more injurious damage will be done to the business interest of this country and the mail facilities of the postal de

partment of the Government of the United States in so far as the mails are carried through the country traversed by its line of railroad in Virginia.

Your orator will now show your Honor that it has endeavored by all the fair means known to it to purchase said strip of land from the said Eager and has offered to him his agents and attorneys to pay the full and fair price of the same, either to be ascertained by agreement between your orator and the said Eager, his agents and attorneys or to submit the same to competent persons, one to be selected by the said Eager, his agents and attorneys, and they two to select a third man; and it has offered to pay, and here again offers to pay to the said Eager every cent fixed by said Commissioners as the value of said strip of land and all the improvements thereon, but these fair and reasonable propositions have each and all been refused by the said Eager his agents and attorneys, but in lieu thereof the said Eager and his attorneys demand that your orator shall pay them the full amount of all the judgment liens that exist against the said L.D. Fulkerson, now deceased, which in any way affect said strip of land, which said judgments and the costs thereon they claim amounts to the sum of \$4800.00 or something in excess thereof, although they well know that said strip of land with all the improvements thereon is not worth as much as \$600.00.

Your orator will further show your Honor that it has attempted to lease said strip of land and the railroad thereon from the said Eager until it could complete condemnation proceedings against the same, and of its intention to institute and complete said condemnation proceedings it has given full notice to the said Eager, his agents and attorneys, and as a rental therefor has offered to pay him a pro rata part of the net earning of said road between Corbin Kentucky and Norton Virginia, equal to the proportion of the length of said strip as compared with the entire length of the line or mileage from Corbin to Norton. It has made him this liberal offer notwithstanding the fact that in point of construction the cost of this strip of land and the railroad on it would be almost infinitesimal as compared with the average cost of said line. This pro-

position not being accepted, your orator offered to pay him 6% interest on the total amount of all the judgments which are liens upon said land and the track thereon until condemnation proceedings could be instituted and completed, but said Eager his agents and attorneys refused to accept either of these fair propositions and they declared that while they knew said strip of land with the improvements thereon was far below in value the amount of said judgments constituting liens on the same, they had the railroad company in a "hole"; that they knew it could not afford to interrupt its business and that they proposed and intended to "squeeze" it into paying the whole of said judgments entirely regardless of the worth or value of said strip of land with its improvements.

Your orator will now further show your Honor that it proposes to condemn said strip of land together with the improvements thereon and to pay for the same the full and complete value thereof together with such damages as may result to the owner or to any other person from ~~the~~ appropriation of said railroad strip of land to its purposes; and for that purpose, and as an initiation of proceedings of condemnation, it on the 18th day of June, 1904 filed in the Clerk's office of Lee County a petition asking for the appointment of Commissioners to assess a fair compensation to be paid for said strip of land and the improvements thereon; showing the necessity for taking the said strip of land; giving a description of the same, together with a survey of said line and a profile of the same, showing the cuts and fills thereon; all of which will more fully and at large appear by reference to said petition and the papers accompanying the same, a copy of which is filed herewith as part hereof marked exhibit "Petition".

Your orator will now show your Honor that as a further step towards the condemnation and appropriation of said strip of land and pursuant to the terms of said petition, it has prepared and had served on the said C.F. Eager, who is a non-resident of the state of Virginia, and prepared and delivered to his attorneys, who are residents of the state of Virginia, and to J.A.G. Hyatt, administrator

&c., Eliza A Taylor and Maggie J. Carns, who are likewise residents of the state of Virginia, notice that on the first day of the September term, 1904 of the Circuit Court of Lee County, it will apply to said Circuit Court for the appointment of Commissioners to go upon said strip of land and determine a just compensation to be paid therefor, together with the improvements thereon with such damages as may be done to the owner thereof or to any other person injured by the appropriation and occupancy of said strip of land for railroad purposes. *A copy of said notice is filed here with as part being marked "Notice"*

Your orator will now show your Honor that the said Eager, his agents and attorneys and the agents and attorneys of J.A.G. Hyatt, administrator, Maggie J. Carns and Eliza A. Taylor are threatening to sue out of the Clerk's office the writ of possession authorized by the decree confirming the sale of said strip of land and the improvements thereon to the said Eager, and they declare that they will have the same executed and as soon as executed they will tear up said track, remove the rails and ties from the same. This course of action on their part would stop the running of trains over that strip of railroad and thereby stop the transaction of railroad business between Ewing, which is ^{the} next nearest station on the west and the town of Norton and the points between Norton and said Ewing, and would likewise destroy the mail service between said points that is now done over said railroad and would effectually cut off all railroad mail service between the east and the west that is transacted over said line of railroad.

Your orator is advised that the public has an interest in the transaction of its business; that the state of Virginia has an interest in seeing that its people are served by this corporation which it has ~~created and~~ licensed to do the business of its citizens; that the Government of the United States is interested in seeing that its mails are duly carried and its citizens along said postal route properly served; but especially your orator, having begun its condemnation proceedings, having filed its petition asking for the appointment of Commissioners and having given the parties interested notice of the time and place when it would apply for the

appointment of said commissioners, and having duly located its line of railroad upon said strip of land, is entitled to have the same remain in tact in its present condition until the condemnation proceedings thereon are fully completed; and in this connection your orator is willing, and it here agrees and binds itself to pay a full and just value for the use and occupation of said strip of land from the date of Mr. Eager's ownership thereof until said ~~party~~ condemnation proceedings are so far completed as to vest title to said strip of land in your orator, together with any damages it may do to said strip of land by the use thereof.

Now the object of this bill is to enjoin and inhibit the said C.F.Eager, his agents and attorneys, together with all persons interested with him in the ownership of said strip of land and improvements thereon or interested in the proceeds of the sale thereof,

from in any way interfering with the use by your orator of said strip of land for railroad purposes, and especially to enjoin, restrain and inhibit them from tearing up the track on said strip of land, taking away the rails and other irons thereon, or from removing said ties or destroying in any way the railroad track on said strip of land or any part thereof, or in any way altering the condition of said strip of land and the improvements thereon as they exist to-day, and to this end it prays that C.F.Eager, John A. G.Hyatt administrator of C.E.Baylor, deceased, Maggie J.Carns and Eliza A.Taylor be made the parties defendant to this bill, and that they each be required to answer the same, but they need not do so under oath that being expressly waived; that an injunction be granted in accordance with object of this bill as herein stated; that upon a final hearing such decree and orders may be made as will protect your orator and any and all other parties interested in said strip of land; and if in any wise mistaken in its special paryers, then that it be granted full and complete general relief.

And as in duty bound it will ever pray.

Louisville & Nashville Railroad Co.

By Counsel

VIRGINIA, Lee County, To Wit:

This day, C.T. Duncan, Agent and Attorney for the Louisville and Nashville Railroad Company, a Corporation organized and existing under the laws of Kentucky, and duly authorized and licensed to do business in the state of Virginia under and by virtue of its laws, personally appeared before me George P. Cridlin ~~xx~~ a Notary Public, in and for the County of Lee in the state of Virginia, and made oath, that he is the duly appointed Agent and Attorney of the Louisville and Nashville Railroad Company in the state of Virginia, that he is acquainted with, and personally cognizant of the facts stated in the forgoing bill, and that each of said facts as therein stated are true as he verily believes. Given under my hand this the 20th day of July 1904.

My commission will expire on the 20 day of July - 190

Geor. P. Cridlin Notary Public.

Upon reading & considering the bill & exhibits
An injunction is hereby awarded enjoining and
restraining the defendant C.T. Eger his agents
~~and~~ employees and all persons interested with
him in the Strip of land ~~in~~ mentioned and described
in the Condemnation proceedings referred to in the
bill from executing the work of possession for
said Strip of land, or taking possession of the same
or any part thereof, or ^{therein} ~~interfering~~ ^{with} ~~the~~
or the use of Campbellant Company thereof in any
manner whatever or in any way changing the
present status of said Strip of land or the
improvements thereon but shall to all intents & purposes
leave said Campbellant Company in ~~the~~ full complete
absolute possession & control of said Strip of land
and all improvements thereon. This Injunction shall

in force untill the further order of
the Circuit Court of Lee County or the
Judge thereof, but is not to take effect
untill the Complainant or some one
for him shall execute & acknowledge
a bond before the Clerk of the Circuit
Court of Lee County ~~in~~ ^{under} the penalty of \$1500,
with good security. Conditioned to pay all
such damages as may be sustained
by ~~any~~ ^{any} person by reason of failing
out this injunction should the same
be hereafter dissolved.

H. C. W. SIREN Judge
of Lee County Circuit Court
July 22. 1904.

To the Clerk of the Circuit
Court of Lee County.

L. + N. R. R. Co.

v. { Bill for Disjunction.

C. F. Eager et al

Filed July 23rd
1904 H. G. Enning
Clerk

Costs:

Clerk \$8.08

Shff. 2.00

Atty 15.00

\$25.08

LEE CIRCUIT COURT:
LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
vs.
C. F. EAGER ET AL:

DEMURRER:-

The defendant's demur~~er~~ to the bill in this cause and say that said bill is not sufficient in law, whereof they pray judgment.

The ground~~s~~ of demurrer they say:

FIRST:-The fact that plaintiff is a common carrier, transporting mails, passengers and freight within and without Virginia is immaterial. The plaintiff stands on no higher or different ground in this regard, than a private individual.

SECOND:-The fact that the plaintiff has given notice to condemn the land in controversy, confers no new right of title on the plaintiff with respect to said land, or certainly with respect to its possession or the right to its control and does not take away from the defendant Eager his complete equitable title to said land and his right to use and control the same in any manner that he may see fit to do.

THIRD:-The facts alleged that the plaintiff had endeavored to come to some equitable arrangement with the defendants, for ~~re-~~quiring title to said land upon terms suggested by the said plaintiff, is no ground for an injunction against the defendant Eager from making such use of said land as he may see fit. Propositions concerning the title of real estate confer no rights or privileges upon the party proposing.

FOURTH:-The matters brought forward herein are now, res adjudicata. Everything brought forward in this bill was either expressly or impliedly before this court and the Court of Appeals in the case of Taylor v. Fulkerson. The only thing now brought forward which was not expressly before the court in that cause is, that notice has been given to condemn said land and this fact was before the court by implication.

FIFTH:-The bill does not in any point of view show any ~~grau~~

grounds for equitable relief or for a permanent injunction.

C. F. Eager

Jno. A.G. Hyatt, Admr.

Maggie J. Carnes.

Eliza A. Taylor.

By counsel.

*L. J. Hyatt
Irwin & Slump
attys for Defendants.*

L. & N. R. R. Co.

vs Demmer

C. F. Eager et al

Filed Aug 16

1904

H. C. Western

Judge

LEE CIRCUIT COURT

LOUISVILLE & NASHVILLE RAILROAD COMPANY

VS. § ANSWER:

C. F. EAGER ET AL:

The joint and seperate answer of C. F. Eager, Administrator, ^{J. A. G. Hyatt,} with [^] of the will annexed, of the estate of C. E. Baylor, deceased, Mag-

gie J. Carnes and Eliza A. Taylor, to a bill exhibited against them in the Circuit Court of Lee County by the Louisville and Nashville Railroad Company under the above styled caption:

For answer to said bill, respondents say, that it is true that the plaintiff company is a Kentucky Corporation, doing business in ^Virginia by virtue of the laws of the said State, and that it has extended its line of road to the town of Norton in the County of Wise and has been operating and is now operating the same substantially in the manner and for the time mentioned in said bill; and true that it does the work of a Common Carrier transporting mails and freight and that it connects with the other railroads mentioned in said bill.

It is also true that the said Company purchased the strip of land in question from John C. Vanoy on September 24th, 1889, and that said Company took possession of said land and constructed its main line of road thereon and has been using and occupying the same ever since; and true also, that the said strip of road was sold by a Commissioner pursuant to decree ^{of} this Court in the cause of Eliza A. Taylor vs. Hattie A. Fulkerson Admrx. of L. D. Fulkerson, deceased, and true that one C. R. Kesterson became the purchaser thereof at the price of \$2250.00 and that his bid was transferred to respondent C. F. Eager, who undertook to protect the prior judgments involved, and that the said bid so transferred was confirmed by the court to respondent Eager, and that writ of possession was awarded to him therefor.

It is true also, that the said plaintiff company made to respondent Eager propositions to buy the said strip of land and to lease the same substantially as set forth in said bill, all

#2.

of which were declined by your respondent Eager and his co-respondents who were beneficially interested with him in the matter, because they did not regard the said propositions as fair and equitable and did not consider that the said plaintiff offered to pay them the true value of the property in question. Respondent Eager did offer to sell and convey to the said Company the land in question, if the said Company would pay in full the amount of judgments and costs, which, ^{as} amount, the bill states, approximates ~~xx~~ \$5,000.00. Respondents say the property in question under the circumstances, was reasonably worth that amount of money and ~~that~~ they knew no law, human or divine, that would require them to sell the said land to the plaintiff upon the plaintiff's own terms, or for less than respondents believed ^{to} ~~would~~ be its fair cash value.

It is also true that the plaintiff Company has made an attempt to institute proceedings to condemn the said land in the manner as shown by the exhibit marked "Petition" filed with said bill. It is also true that respondent Eager for himself and his co-respondents, prior to said injunction, was asserting his right and intention to sue out the writ of possession and have the same executed as he was advised he had a right to do. The plaintiff company obtained a stay of proceedings for 60 days at the last May term of your Honor's Court for the alleged purpose of appealing from said decree of Taylor vs. Fulkerson, but it did not press said appeal, and did not give notice to have record copied, and did not have such record copied, and respondents say, that, but for the interposition of your Honor's writ of injunction before the end of said sixty days, they would have had a right at the end of said time to an execution of the said writ of possession and Respondents admit that it was their purpose to have execution thereof.

These respondents submit that, taking the allegations of the plaintiffs bill as true, the writ of injunction should not be sustained and they have demurred heretofore to said bill,

#3.

which demurrer your Honor has overruled,,and to which action of your Honor these respondents respectfully submit.

Respondents will now show your Honor that the attempted condemnation proceedings are illegal and void, and they are advised that they should be quashed and dismissed, and that this injunction should thereupon be dissolved. The reasons for such action with regard to the said condemnation proceedings, are as follows:-

FIRST: Because there is no memorandum filed in ~~this~~ ^{said} cause setting forth the names and residences of the owners of the land in controversy as required by law.

SECOND: Because the plat of the survey and profile filed in ~~the~~ ^{said} cause is not such a plat and profile as the law requires.

THIRD: Because the said petition is not verified as required by law, in that the affidavit to the said petition is made before a Notary Public residing outside of Virginia, who certifies the said affidavit under his hand ~~and~~ who, although he attaches his seal, does not recognize his seal in the body of his affidavit.

FOURTH: Because the said petition nowhere shows that the plaintiff had failed to agree with the defendant on the purchase price of the land in controversy.

FIFTH: Because the petition shows that the said land is not the subject of condemnation by the plaintiff in ~~this~~ ^{said} proceeding.

Respondents are advised, therefore, that the said attempted condemnation proceedings are void and of no effect, and since your Honor's injunction was based upon the same, that if respondents contention be correct, then your Honor will dissolve the said injunction and allow respondent to execute their writ of possession.

Respondents will now further show unto your honor that the only authority that the plaintiff Company has for exercising the right of eminent domain in virginia, is by x virtue of an Act

#4.

of the General assembly of Virginia, approved March 30th, 1887, which Act is found on pages 19 and 20 of the Acts of Extra Session, 1887, and these respondents refer to same as a part of this answer as fully as if it was spread at length herein. They say that this Act grants to the plaintiff Company the Authority to extend, locate, construct and operate its line from the State of Kentucky into the State of Virginia,

"with the power from time to time of locating, constructing and operating such branches and lateral as may enable it to connect said extension with mining, manufacturing and other operations in any of the counties in which said extension is authorized hereby to be located and constructed."

Section four of said Act is as follows:

"Said Company shall begin work within two years and complete the same within five years from the date of this act, otherwise the rights and privileges hereby granted shall cease and become void."

Respondents say that the piece of land in controversy is a part of the main line of the plaintiff company about mid way between the stations of Rose Hill and Ewing and about two miles from either station; that there are no laterals or branches along said line beyond the yard limits of the two said stations; that the purpose of the present condemnation proceeding is not for a branch or a lateral, but for its main line and they are advised that ^{it} ~~there~~ is not competent for the said Company to acquire by condemnation any right of way for its said main line after the expiration of five years from March 30th, 1887, and they, therefore, plead the Act of Limitation which is set forth in the aforesaid Legislative Act and rely upon same as a complete bar to the right of the plaintiff company to acquire at this time the land in controversy by condemnation proceedings.

Further answering, your respondents charge that the plaintiff company has no standing in a court of equity in Virginia, for the reason that it has failed to comply with Section 1104 of the Code of Virginia, as amended by Act of Assembly Approved May 13th, 1903, in that it has not filed with the State Corpor-

#5.

ation Commission a written power of attorney in duplicate appointing some person residing in this State as its Agent upon whom all legal process against a corporation shall be served and who shall be authorized to enter an appearance in its behalf and has not filed two duly authenticated copies of its Charter; and, furthermore, has not complied with the requirements of the law of Virginia relative to the licensing of a foreign corporation doing business in Virginia and has never received and has not now any license from the said Corporation Commission to do business in the State of Virginia.

WHEREFORE, Respondents pray that the injunction granted herein be dissolved and that the bill of the plaintiff be dismissed and that they be allowed to proceed with the execution of their writ of possession awarded to respondent Eager in the aforesaid cause of Taylor vs. Fulkerson; and for costs and general relief.

Respondents will ever pray etc.

C. F. Eager,

J.A.G.Hyatt, Admr. Etc.

Eliza A. Taylor

Maggie J. Carnes,

By Counsel.

*R. T. Irvine
L. T. Hyatt
Counsel.*

L. & N. R. R. Co
v { In Chancery
C. F. Eager, et al

Answer of C. F. Eager
et al to the plain-
tiff's bill for injunc-
tion.

Filed September 29,
1904. H. C. Ewing.
Clerk.

LEE CIRCUIT COURT:

L. & N. R. R. CO.

V.

C. F. EAGER ET AL:

AMENDED ANSWER:

Respondents C. F. Eager, J. A. G. Hyatt Administrator with the will annexed of C. E. Baylor, deceased, Maggie J. Carnes and Eliza A. Taylor file this their amended answer in the above styled cause or as an amendment to their original answer this day filed herein. Respondents say that they desire to reply specifically to those allegations of the plaintiffs bill set forth in the exceptions this day filed by the plaintiff to the original answer of respondents this day filed herein.

Replying thereto, respondents say, that they think their original answer is sufficient and that it does answer those sections of the plaintiffs bill above referred to, but in order to remove any doubt thereon further answering, they say,

FIRST: They admit that if the business of the plaintiff company should be interrupted and that if possession of said strip of land should be delivered to respondent Eager and if said plaintiff should be prohibited from using the same, from running its trains over the road constructed on said land, some injury would result to the plaintiff and it is likely some damage would be done to shippers who use the said line of road and it is possible that some temporary delays in the mails carried by said road would result, but they deny that irreparable injury would result to the plaintiff or to the business interests before mentioned; but respondents further say that this is immaterial to the issues of this cause, as they are advised. The plaintiff company had ^{the} right to protect itself by bidding for the property involved at the sale thereof under decree in the case of Taylor vs. Fulkerson and they have had an opportunity to buy the same at what respondents think a reasonable price since ~~si~~ respondent

Eager has owned said land and respondents are advised that such injury ~~be~~ as would result to the plaintiff has been caused by its own negligence and not by any default or misconduct on the part of these respondents.

SECOND: Respondents repeat what they have said in their original answer, that it was their intention to sue out of the clerk's office a writ of possession granted to respondent ~~Eager~~ by the decree confirming the ~~same~~ sale of said strip of land and the improvements thereon to said Eager, and to have the same executed, and they admit that it was their intention to tear up the said track and remove the rails and ties from the same if this course should be necessary to the full and complete enjoyment of the said strip of land. They are advised that they had a right to do so and they admit that it was and is their purpose if the said writ of possession is executed to use the said strip of land in any manner that they may see fit. They admit that if this should be done it will stop the running of trains over the said strip of land. Whether or not it would stop the transaction of railroad business between Ewing and Norton and other points as alleged in the bill respondents can only surmise. This would depend entirely upon what arrangements, temporary or permanent, the said railroad company should make for ^{conducting} ~~connecting~~ its business ^{over} ~~with~~ other lines. The plaintiff company is better able to answer as to what the result of this course of action would be than are these respondents.

And now having answered as fully as they are advised it is material they should answer, respondents pray to be dismissed.
Etc.

L. T. Hyatt

R. I. Davis

Counsel

etc.

material they should answer, respondents pray to be dismissed.

And now having answered as fully as they are advised it is this course of action would be than are these respondents.

company is better able to answer as to what the results of for connecting its business with other lines. The plaintiff temporary or permanent the said railroad company should make only surmise. This would depend entirely upon what arrangements Norton and other points are alleged in the bill respondents can atop the transaction of railroad business between Swine and trains over the said strip of land. Whether or not it would admit that it will should be done it will atop the running of said strip of land in any manner that they may see fit. They

L + N R.R. Co.

vs { In Chy

C. F. Eager et al.

Amendment to
Answer of C. F.
Eager et al

Filed Sept 29 1904
in open court & lay
leave thereof.
H. C. Swine,
Clerk.

SECOND: Respondents repeat what they have said in their

part of these respondents.

its own negligence and not by any default or misconduct on the

themselves as would result to the plaintiff has been caused by

hacker has owned said land and respondents are advised that no

Louisville & Nashville Railroad Company, - - - - - Plaintiff.

vs.)

In Chancery.

C.F. Eager, J.A.G. Hyatt, administrator of
C.E. Baylor, deceased, Eliza A. Taylor
and Maggie J. Carnes. - - - - - Defendants.

This cause came on this day to be heard on the bill and exhibits therewith, the original and amended answers of defendants, and general replications thereto, an agreed statement of facts, and the papers formerly read in the cause, and was argued by counsel;

On consideration whereof, it is adjudged, ordered and decreed that the injunction awarded herein by the Judge of this Court in vacation on the 22nd day of July, 1904, be and the same is hereby perpetuated.

And it appearing that nothing else remains to be done herein, it is ordered that this cause be stricken from the docket.

L. & N. R.R. Co.

vs. { In Chy

C. F. Eager et al

Entered in Chancery
A. B. No. 7 page 584

Enter this decree

Hawshorn

February 22, 1905

Louisville & Nashville Railroad Company
Complainant

v 3 In Chancery

C. F. Eager, J. A. G. Hyatt administrators
of B. B. Taylor deceased Elisha A. Taylor
and Maggie J. Cairns

Defendants.

This Cause came on this day to be heard
on the bill ^{original and amended} answers ^{of defendants} and general
^{the papers formerly filed} replication ^{upon an agreed statement of facts} thereto, and was argued
by counsel.

On consideration whereof it is
advised ordered and decreed that
the information awarded herein by
the Judge of this Court in vacation on
July 22. 1904. be and the same is
hereby continued until the final
determination of the ~~cause~~ ^{result in}
~~the condemnation proceedings referred~~
~~to in said agreed statement of facts~~
Another Cause is continued - perpetuated
and it appearing that nothing else
remains here to be done herein it
is ordered that this cause be
stricken from the docket -

L. & N. R. R. Co.
72 { In Chy.
C. F. Eager et al

Enter this Deed

February, 22, 1905

LEE CIRCUIT COURT:

L. & N. R. R. CO.

V.

C. F. EAGER ET AL:

This cause came on again this day to be heard upon the papers formerly read herein and the proceedings heretofore had herein in vacation. And the defendants asked leave to file their joint and separate answer which leave is granted, and said answer ~~was~~ accordingly filed; and the plaintiff by counsel, filed two exceptions in writing to ~~the~~ ^{an} said answer, ^{which exceptions are sustained} whereupon the defendants asked leave to file amendments to their said answer which leave is granted and said amendments ~~and~~ ^{was} were accordingly filed, and plaintiff replied generally to said answer as so amended.

And this cause is continued.

L. & N. R. Co.
v. { Lu Chu
C. F. Cager et al

Devere & Co. Ltd.

Em Chey & Co.

No. 7, page 542

Enter this Sept 29 1904

~~Heavenly~~

C. F. CAGER ET AL:

A.

L. & N. R. Co.

THE CIRCUIT COURT:

IN VACATION OF THE CIRCUIT COURT OF LEE COUNTY AT WISE COURT)
HOUSE, VIRGINIA, AUGUST 18th, 1904.

Louisville & Nashville Railroad
Company, Complainant.

vs,

C.F. Eager, John A.G. Hyatt, Admr.,
of C.E. Baylor, deceased, Maggie
J. Carns and Eliza A. Taylor,
Defendants,

In Chancery, Bill for
Injunction.

This cause came on to be heard the 16th day of August, 1904 before the undersigned Judge of the Circuit Court of Lee County, and in vacation of said Court at the Court-house of Wise County, Virginia, on the demurrer of Defendants, filed August 16th, 1904 to Complainant's bill and joinder of complainant in said demurrer and on the motion of Defendants (after due notice of said Motion) to dissolve the Injunction, awarded by the undersigned Judge herein on July 22, 1904 and was argued by counsel.

And the undersigned Judge having taken until this day to Consider of said demurrer and said motion to dissolve, and being fully advised it is now adjudged, ordered and decreed that said demurrer and said motion to dissolve said injunction be and they are each hereby over ruled.

H. A. W. Siler

Judge of the Circuit Court of Lee
County, Virginia.

To the Clerk of the Circuit Court
of Lee County, who will enter this decree.

L & N R R Co

vs } Deere

C. F. Gager & als
Plaintiffs

Entered in
Chancery Q. B.
No. 7. p. 300

Aug 18. 1901.

Lon R R Co

Is } Tucky.
C. J. Eager vs

It is agreed that ~~a~~ ^{the} complete
~~transcript~~ record in the
Confirmation proceeding be
the law side of the court.
~~upholding the~~ referred to in
the bill ~~shall be~~ filed in the bill
shall be ~~considered as~~ receiving the
Order of Confirmation of the report
of the Commissioners be read before the court
as evidence in the Confirmation of this
Chancery case.

July 22. 1905

Duncan & Fulton
attys for Complainant
Hyatt & Irvine
attys
for Defendants

L. & N. R. R. Co
vs. { In Chy.

C. F. Eager et al

Agreed Statement
of facts -

Filed Feb. 22, 1905

H. C. G. Ewing, Clerk.

By W. E. Hannon, D.C.

LEE CIRCUIT COURT:

LOUISVILLE & NASHVILLE RAILROAD COMPANY, COMPLAINANT,

vs.

C. F. Eager et al, Defendants.

Exceptions of the plaintiff to the answer of the defendants

The Plaintiff excepts to the answer of the defendants,

FIRST:- Because in their said answer the said defendants make no response to the following allegation:-

"Your Orator will now show your Honor that if its business is interrupted, if possession of the said strip of land is delivered to the said Eager, and Your Orator is prohibited from using the same in running its trans over the road constructed upon said strip of land, great and irreparable injury will result to it, and like or even greater and more injurious damage will be done to the business interests of this country and the mail facilities of the postal department of the Government of the United States in so far as the mails are carried through the country traversed by its line of railroad in Virginia."

SECOND: Because in their said answer the said defendants make no response to the allegation of the following paragraph of the bill:-

"Your orator will now show your Honor that the said Eager, his agents and attorneys and the agents and attorneys of J.A.G. Hyatt, Administrator, Maggie J. Carnes and Eliza A. Taylor are threatening to sue out of the Clerk's Office the writ of possession authorized by the decree confirming the sale of said strip of land and the improvements thereon to the said Eager, and they declare that they will have the same executed and as soon as executed they will tear up said track, remove the rails and ties from the same. This course of action on their part would stop the running of trains over that strip of railroad and thereby stop the transaction of railroad business between Ewing, which is the point next nearest Station on the West, and the Town of Norton and the points between Norton and said Ewing, and would likewise destroy the mail service between said points that is now done over said railroad and would effectually cut off all railroad mail service between the East and the West that is transacted over said line of railroad.

In all of which particulars the said Complainant excepts to the answer of the said defendant as evasive, imperfect and insufficient, and humbly prays that the said defendant may be compelled to put in a full and sufficient answer to said bill.

C. J. Duncan
E. M. Fulton } P. Q.

in all of which particulars the said Complainant excepts

the bill:-

“Your orator will now show Your Honor that the said Peter, railroad will service between the East and the West that is now gone over said railroad and would effectively cut off all likewise destroy the rail service between said points that is between said points between Norton and said Twin, and would be the next nearest Station on the West, and the Town of by stop the formation of railroad business between Twin, which stop the running of trains over that strip of railroad and therefore from the same. This course of action on their part would executed that they will tear up said track, remove the rails and declare that they will have the same executed and as soon as of land and the improvements thereon to the said Peter, and they action authorized by the decree confirming the sale of said strip threatened to are out of the Clerk's Office the writ of possession; Administrator, Maggie J. Gaines and Eliza A. Taylor are his agents and attorneys and the agents and attorneys of J.A.C.

“Your orator will now show Your Honor that the said Peter,

Because in their bid answer, the said defendants

no response

23.

THE CIRCUIT COURT:

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon C. F. Eager, J. A. H. Hysell,
Admin of C. E. Taylor deceased, Maggie
J. Barnes, and Eliza A Taylor

to appear at the Clerk's office of the Circuit Court of the County of Lee
at the rules to be held for the said Court, on the 3rd Monday in August 1884,
to answer a bill in chancery, exhibited against them in our said Court for
by the Louisville and Nashville Railroad
Co. a corporation

And have then there this writ. Witness, H. E. Ewing, Clerk of our said
Court, at the court-house, the 26th day of July 1884, and in the
129th year of the Commonwealth.

H. E. Ewing Clerk

The bond required in this case having been given, the defendant C. F. Eager, his agents, Employees and all persons interested with him in the strip of land mentioned and described in the condemnation proceedings referred to in the bill are enjoined and restrained from executing the writ of possession for said strip of land or taking possession of the same or any part thereof, or interfering with the same or the use by complainant Company thereof in any manner whatever, or in any way changing the present Status of said strip of land or the improvements thereon but shall to all intents and purposes leave said complainant Company in full complete and absolute possession and controll of said strip of land and all improvements thereon. This injunction to continue in force untill the further order of the Circuit Court of Lee County or the Judge thereof but is not take effect untill the complainant or some one for it shall execute & acknowledge a bond before the Clerk of the Circuit Court of Lee County in the penalty of \$1500.00 with good security conditioned to pay all such damages as may be sustained by any person by reason of sueing out this injunction should the same be hereafter dissolved.

W. T. Ewing Clerk.

Geo. P. Middlem N.P.

This day P. M. Ball personally appeared before me, Clerk of the Circuit Court of Lee County, Virginia and made oath that he delivered a true and correct copy of the within writ in day to C. F. Eager in Courtland Pop. Room on Aug 24th 1904. I will make my hand this Aug. 10th 1904.

Form No. 300.

L. & M. Railroad Co.

SUBPOENA
IN
CHANCERY.

C. F. Eager et al

C. F. Eager p. q.

To *2nd Aug.* Rules,
Circuit Court.

J. M. Ball, Sheriff, Lee Co.

Executed on the 1st day of August 1904 by delivering an office copy of the within Chancery, to J. A. B. Light, Attorney, Major J. Cannon and Eliza A. Taylor. This August the 10th 1904.

Cash:

Clark \$8.08

Shuff. 2.00

Atty. 15.00

\$25.08

1008

Louisville + Nashville Rail-
road Co

rs. Bill and
Injunction;

C. F. Egan et al

1904 2nd Aug. Rule

Bill for Injunction
filed, demurrer filed,
Spa. ex. cont'd + D. N.

First Sept. Rule
D. N. confirmed
& cause set for
hearing.